IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.1254 OF 2007
IN
SUIT NO. 1489 OF 1995

D S J Securities Corporation Limited .. Plaintiff
v/s.
Hero Honda Motors Limited and others .. Defendants

Mr.Rakesh Pandey i/by Mr. Ashwin Ankad for the plaintiff.
Ms. Kavita Lalwani for the defendant Nos.1 and 2.

CORAM : A.M. KHANWILKAR, J.
DATED : 18TH JULY, 2007

P.C.

This motion is not on board. As the suit in which this motion is taken out is listed today for hearing, before proceeding with the suit, it is appropriate that order is passed on the present motion. For that reason, motion is taken up on board forthwith for consideration.

2. Counsel for the plaintiff, however, submits that the motion is now scheduled to be heard on 20th July, 2007. Even so, I see no propriety in deferring the order on the present motion. Counsel for the plaintiff would then submit that the plaintiff would like to file reply to oppose this motion. It is seen from the record that the motion has been served on the plaintiff as back as on 3rd April, 2007. The motion was placed for direction on 13th June, 2007 which order records that the motion be proceeded on 5th September, 2007. Even so, I see no propriety in deferring the hearing of the present motion.

3. After having gone through the assertions made in the affidavit and as there is no reason to doubt the correctness of the stand taken therein, the

defendant Nos.1 and 2 have made out sufficient cause for getting relief in terms of prayer clause (a), (c) and (d) of the motion which read thus-

> (a) That the Ex-parte order passed on 27.7.2000 against the Defendant Nos.1 and 2 for the suit been transferred to the list of undefended suits as no Written Statement was filed by the Defendant Nos.1 and 2 and also as the Advocate for the Defendant Nos.1 and 2 due to personal difficulty could not reach in the matter and apply for extension of time to file the Written statement.
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> (c) That the Defendant Nos.1 and 2 be allowed to file the Written Statement affirmed on 13.09.2000.
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> (d) That delay if any in taking out the present Notice of Motion be condoned in the interest of justice, equity and good conscience.

4. In the interest of justice, the motion deserves to be made absolute in terms of prayers (a), (c) and (d) as referred to above. In my view, the defendant deserves such indulgence as the suit is only of the year 1995, whereas suits from the year of 1992 are still pending for hearing in this court. Thus understood, in the interest of justice, motion is made absolute in terms of prayers (a), (c) and (d) on condition that defendants to pay cost quantified at Rs.5000/- to the plaintiff within two weeks from today. Payment of cost is condition precedent for taking the written statement of the said defendants on record.

(A.M. KHANWILKAR, J.)